

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOHN T. POFF

Claimant

VS.

RAYTHEON AIRCRAFT COMPANY

Self-Insured Respondent

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Docket Nos. 1,004,083
& 1,007,141

ORDER

Claimant appealed the February 5, 2004 Award entered by Administrative Law Judge Jon L. Frobish. The Board heard oral argument on August 17, 2004, in Wichita, Kansas.

APPEARANCES

Michael L. Snider of Wichita, Kansas, appeared for claimant. Jeff C. Spahn, Jr., of Wichita, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. Additionally, at oral argument before the Board, the parties agreed the medical records that were attached to the Preuett and Eyster depositions were part of the record to be considered in these claims despite the fact those exhibits were not formally offered. At oral argument, the parties also agreed the settlement hearing transcript and the stipulated award that were attached to claimant's submission letter to the Judge were part of the record despite the fact those documents were not formally offered at any hearing or deposition.

ISSUES

Claimant alleges he injured his back working for respondent from April 2002 and each and every day worked through September 22, 2002.

The only issue presented to the Judge was whether claimant sustained any additional functional impairment as a result of his alleged injury. In the February 5, 2004 Award, the Judge determined claimant had sustained an additional five percent whole body

functional impairment and, consequently, granted claimant benefits for a five percent permanent partial general disability.

Claimant contends Judge Frobish erred. Claimant argues the Board should find claimant sustained a permanent functional impairment greater than five percent. Claimant requests the Board to consider the 10 percent whole body functional impairment rating rendered by board-certified orthopedic surgeon Robert L. Eyster, M.D., and the 34 percent whole body functional impairment rating rendered by P. Brent Koprivica, M.D.

Conversely, respondent requests the Board to affirm the February 5, 2004 Award.

The issues now before the Board on this appeal are whether claimant sustained any additional functional impairment due to the work that he performed for respondent through September 22, 2002, and if so, the amount. Claimant is not seeking a work disability (a permanent partial general disability greater than the whole body functional impairment rating) in these claims as he continued to work for respondent following the injury or aggravation to his back.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

The parties agreed claimant sustained personal injury by accident arising out of and in the course of his employment with respondent from April 2002 and each day worked through September 22, 2002, while handling aircraft parts.

Claimant, who had a previous back injury, irritated his back in April 2002 while handling aircraft parts. Claimant reported these newest back symptoms to his supervisor and was referred to the company physician for treatment. When physical therapy did not resolve claimant's symptoms, the doctor ordered an MRI, which was done on May 14, 2002. After the MRI, claimant was advised he had a disc pushing against his spinal cord.

Claimant also recalled a specific incident when his back popped while he was moving and scooting heavy batteries. After that incident, claimant began experiencing pain in his testicles, which caused incontinence. Before April 2002, according to claimant, he had experienced neither pain in his testicles nor urinary incontinence.¹

As early as May 13, 2002, claimant reported urinary incontinence to the company doctor. But, according to Dr. Robert L. Eyster's office notes, on May 23, 2002, claimant

¹ R.H. Trans. at 12, 13, 15, 17.

denied having either bowel or bladder problems when he saw the doctor. Claimant reported an incident of urinary incontinence to Dr. Eyster on September 24, 2002. But the doctor's office notes from visits in October and December 2002, and January, February, May and June 2003 do not reflect that claimant was experiencing any bladder problems.

As indicated above, claimant testified he never experienced pain in his testicles before April 2002. But the medical records from one of claimant's personal physicians, Dr. James E. Logan, who treated claimant for possible chronic prostatitis commencing in July 1998, indicate claimant had left testicular pain in December 2001. At that time, Dr. Logan diagnosed possible left epididymo-orchitis. Dr. Logan, however, who last treated claimant in April 2002, testified he did not recall that claimant ever complained of urinary incontinence.

On May 14, 2002, claimant underwent an MRI, which indicated claimant had a "[d]isc protrusion at the T11-12 level central and to the right causing narrowing of the canal on the right and causing effacement of the cord and contact of the exiting nerve root on the right."²

At claimant's attorney's request, in June 2002 claimant saw neurosurgeon Paul S. Stein, M.D. The doctor saw claimant again in August 2003 at respondent's attorney's request.

Claimant's attorney also hired Drs. Edward J. Prostic and P. Brent Koprivica to examine claimant and provide their opinions. Neither party deposed Dr. Prostic, who examined claimant in December 2002. But claimant did present Dr. Koprivica's testimony.

What functional impairment did claimant sustain as a result of the work he performed for respondent between April and September 22, 2002?

According to Dr. Eyster, who is a board-certified orthopedic surgeon, the bladder can be compromised by central disc protrusions upon the spinal cord in the lower thoracic and upper lumbar regions.³ And injury involving the T11-12 disc is medically competent to cause pain in the testes.⁴ Considering that claimant had disc bulging at the T11-12 intervertebral space with resulting symptoms, Dr. Eyster rated claimant as having a 10 percent whole body functional impairment under the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (Guides) (4th ed.).

² See Preuett Depo., Ex. 2.

³ Eyster Depo. at 5.

⁴ *Id.* at 9.

Respondent introduced the testimony of Dr. Logan. Although the doctor admits he has not seen the MRI of claimant's back and has not treated claimant since April 2002, Dr. Logan felt it was possible that claimant's ongoing incontinence was being caused by prostatitis, which would likely improve with aggressive treatment.⁵ On the other hand, Dr. Logan also testified it was possible urinary incontinence could be caused by a disc drastically impinging upon the spinal cord.⁶ Neither party asked Dr. Logan for an opinion regarding claimant's functional impairment rating.

According to Dr. Koprivica, who examined claimant in April 2003, claimant's May 2002 MRI film shows the T11-12 disc touching claimant's spinal cord. Dr. Koprivica concluded claimant sustained an additional 34 percent whole body functional impairment under the *Guides* due to the injury that is the subject of these claims.⁷ The doctor attributes claimant's urinary incontinence to claimant's injury at work rather than to any prostate problem or infection.

The only other physician to testify, Dr. Stein, saw claimant on two occasions. Dr. Stein, who is a board-certified neurosurgeon, concluded claimant's T11-12 disc was not compressing the spinal cord. Moreover, the doctor determined the T11-12 disc was not responsible for claimant's bladder problems as a neurogenic bladder does not typically cause nocturnal bed-wetting as opposed to other loss of control. Further, the doctor could not see any spinal cord compression on the MRI studies that suggested a neurogenic bladder and, finally, there was nothing he found during his examination to suggest any spinal cord dysfunction.⁸ It is noteworthy that Dr. Stein reviewed the actual films from claimant's May 2002 MRI.⁹

Based upon his evaluation, Dr. Stein concluded claimant sustained an additional five percent whole body functional impairment under the *Guides* due to the injuries that he sustained at work in 2002 as claimant had aggravated his preexisting degenerative disc disease.¹⁰

The Board finds and concludes it is more probably true than not that claimant has sustained an additional 10 percent whole body functional impairment due to the injuries

⁵ Logan Depo. at 28.

⁶ *Id.* at 20.

⁷ Koprivica Depo. at 13.

⁸ Stein Depo. at 9.

⁹ *Id.* at 26.

¹⁰ *Id.* at 8.

that he sustained while working for respondent between April and September 22, 2002. The Board finds, in this instance, that Dr. Eyster's opinion of functional impairment is the most persuasive as it appears to be supported by the May 2002 MRI report and appears consistent with the *Guides*.

Consequently, claimant is entitled to receive benefits for a 10 percent permanent partial general disability as defined by K.S.A. 44-510e.

AWARD

WHEREFORE, the Board modifies the February 5, 2004 Award to increase claimant's permanent partial general disability from five percent to 10 percent.

John T. Poff is granted compensation from Raytheon Aircraft Company for a September 22, 2002 accident and resulting disability. Based upon an average weekly wage of \$897.38, Mr. Poff is entitled to receive 41.50 weeks of permanent partial general disability benefits at \$432 per week, or \$17,928, for a 10 percent permanent partial general disability, making a total award of \$17,928, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of August 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael L. Snider, Attorney for Claimant
Jeff C. Spahn, Jr., Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director